

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
WHITEWATER CREEK - BASIN (40K)
PRELIMINARY DECREE

CLAIMANT: James A. Murdock Trust Under Will

CASE 40K-0050-R-2022

40K 167604-00

40K 30155778

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claim 40K 167604-00 appeared in the Preliminary Decree for the Lower Missouri River Division, Whitewater Creek. The claim is owned by James A Murdock Trust. The claim received issue remarks from the DNRC. The claim was consolidated into Case 40K-0050-R-2022 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 40K 167604-00 received the following substantive issue remarks from the DNRC:

THE CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 26.44 TIMES THE CAPACITY OF THE RESERVOIR.

2. On May 11, 2020, the Court set a filing deadline requiring the Claimants to work with the DNRC under §85-2-248(5), MCA to address the issue remarks on the claims.

3. On August 22, 2022, DNRC Water Resources Specialist Pam Weinmeister filed her *Memorandum* in this matter. Ms. Weinmeister's *Memo* states that she was contacted by James Murdock on May 17, 2022, who later paid a visit to the Glasgow Regional Office on May 26, 2022. In her *Memo*, Ms. Weinmeister states that Mr. Murdock confirmed that water is used from Whitewater Creek, East Fork and Unnamed Tributary of Whitewater Creek, East Fork to irrigate the place of use. Ms. Weinmeister further states that based on this information, an implied claim should be generated for the place of use irrigated by the Unnamed Tributary of Whitewater Creek, East Fork. The *Memo* includes a proposed abstract for the implied claim denoting the following changes to the claim 40K 167604-00 necessary for the creation of the implied claim.

40K 30155778

*Flow Rate: ~~A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.~~ **FF008 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.**

Volume: **22.17 AC-FT** ~~100.50 AC-FT~~

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: ~~67.00~~ **14.78**

*Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK, EAST FORK

Source Type: SURFACE WATER

~~*Source Name: WHITEWATER CREEK, EAST FORK~~

~~Source Type: SURFACE WATER~~

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SW	SWNE	7	36N	32E PHILLIPS

~~Source Name: WHITEWATER CREEK, EAST FORK~~

~~*Period of Diversion: MARCH 15 TO MAY 15~~

~~Diversion Means: DAM~~

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
2 ID 1	 NWSWSE	W2	SWSE	7	36N	32E PHILLIPS

*Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK, EAST FORK

*Period of Diversion: MARCH 15 TO MAY 15

Diversion Means: DIVERSION DAM

~~A PUMP LOCATED AT THE RESERVOIR IS A SECONDARY MEANS OF DIVERSION.~~

~~*Reservoir: ONSTREAM~~

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SW	SWNE	7	36N	32E PHILLIPS

~~Diversion to Reservoir: DIVERSION # 1~~

~~Dam Height: 11.00 FEET~~

~~Depth: 0.00 FEET~~

~~Surface Area: 1.19 ACRES~~

~~Capacity: 3.00 ACRE-FEET~~

~~THE CAPACITY, DAM HEIGHT, MAXIMUM DEPTH AND SURFACE AREA HAVE BEEN ESTIMATED BY DNRC.~~

Period of Use: MARCH 15 TO MAY 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	27.00 3.87	 W2W2SE	W2NE	7	36N	32E	PHILLIPS
2	20.00 1.42	 SENESE	W2SE	7	36N	32E	PHILLIPS
3	17.00 9.49	 SESW	E2SW	7	36N	32E	PHILLIPS
Total:	67.00 14.78						

4. Further, the *Memo* states that the issue remark regarding the volume should be considered resolved and should be removed because, “[t]he decreed volume is less than the climatic area volume guideline and is reasonable given the design and historical operation of the system.”

5. Claim 40K 167604-00 also received notice-type issue remark denoting modification made by the DNRC during its reexamination of claims. The remarks state that if no objections are filed to the elements modified, they should be removed. No objections were filed.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is

overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSIONS OF LAW

1. The evidence in the record is sufficient to resolve the issue remarks placed on the above-captioned claim.

2. The additional information and subsequent recommendations provided in Ms. Weinmeister's *Memo* resolve the issue remarks appearing on the claim. An implied claim should be generated as discussed in Finding of Fact No. 4, and the issue remarks regarding source and volume for claim 40K 167604-00 should be removed.

3. The notice-type issue remarks appearing on claim 40K 167604-00 served their notice purpose and should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

James A. Murdock Trust Under Will
James W. Murdock, Trustee
2932 Content Road
Malta, MT 59538

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 167604-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MURDOCK, JAMES A TRUST UNDER WILL
JAMES W MURDOCK, TRUSTEE
2932 CONTENT ROAD
MALTA, MT 59538

Priority Date: SEPTEMBER 25, 1965

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS
ONSTREAM RESERVOIR.

Volume: 100.50 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 67.00

Source Name: EAST FORK WHITEWATER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNE	7	36N	32E	PHILLIPS

Period of Diversion: MARCH 15 TO MAY 15

Diversion Means: DAM

A PUMP LOCATED AT THE RESERVOIR IS A SECONDARY MEANS OF DIVERSION.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWNE	7	36N	32E	PHILLIPS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 1.19 ACRES

Capacity: 3.80 ACRE-FEET

Period of Use: MARCH 15 TO MAY 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	27.00		W2NE	7	36N	32E	PHILLIPS
2	23.00		W2SE	7	36N	32E	PHILLIPS

3	17.00	E2SW	7	36N	32E	PHILLIPS
Total:	<u>67.00</u>					

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 30155778 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: JAMES A MURDOCK
7279 N WHITEWATER RD
WHITEWATER, MT 59544

Priority Date: SEPTEMBER 25, 1965

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

Volume: 22.17 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 14.78

Source Name: UNNAMED TRIBUTARY OF EAST FORK WHITEWATER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWSE	7	36N	32E	PHILLIPS

Period of Diversion: MARCH 15 TO MAY 15

Diversion Means: DIVERSION DAM

Period of Use: MARCH 15 TO MAY 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3.87		W2W2SE	7	36N	32E	PHILLIPS
2	1.42		SENESEW	7	36N	32E	PHILLIPS
3	9.49		SESEW	7	36N	32E	PHILLIPS

Total: 14.78